

RELATIVISTIC ISSUES IN ARISTOTLE'S THEORY OF JUSTICE

Introductory Remarks

The modern scholar of Aristotle's political and ethical philosophy faces the vital question of the value of this political and theoretical system of ideas in understanding the function of modern judicial relations. This study aims to approach the *Nicomachean Ethics* and explore the theory of justice, which is analyzed therein, from the angle of its inability to be an explanatory basis for modern formalistic judicial relations.

From books *I* to *IV*, the *Nicomachean Ethics* could be seen as the theoretical field where concepts are defined, as well as the overall reasoning which will be applied in Book *V* – the main book – in which Aristotle shall construct the concept of justice. In Book *V*, after the author sets forth his conceptual framework, he examines the meaning of justice, what it is and into which categories it is divided. Moreover, he analyzes the socio-political terms of justice and, thus, he makes it clear that he intends for it to be controlled as an idea and a function by the institutions of the city, which are in turn controlled by *Reason*¹, a quality of the wise and virtuous citizen.

Aristotle, in his *Nicomachean Ethics*², begins in a thorough and systematic way the dialogue on ethics and, hence, on justice. «To Aristotle,

1. For an interesting interpretation of the concept of «Logos» in the *Nicomachean Ethics*, cf. F. SPARSHOTT, *Taking Life Seriously, A Study of the Argument of the Nicomachean Ethics*, Toronto, University of Toronto Press, 1996, p. 101. Cf. I. DÜRING, *Darstellung und Interpretation Seines Denkens*, greek transl. A. Georgiou-Katsivela, vol. B', Athens, MIET, 2003, pp. 252-254.

2. In the field of the literary and philosophical research there is great controversy concerning Aristotle's Ethics. The controversy is mainly based on literary arguments since Aristotle's Ethics is developed in three different books. The *Eudemian Ethics* are commonly considered to be the first works of Aristotle's Ethics. The *Nicomachean Ethics* will be the main focus of our study, since they are considered to depict Aristotle's mature Ethics, while they do not deviate content-wise and analytically from the *Eudemian Ethics*; and the *Great Ethics (Magna Moralia)* which are usually not considered as a work of Aristotle, but rather as a summation written by Aristotle's followers on the *Eudemian Ethics*. Düring, in his ex-



the field of ethics concerns human *actions* (πράξεις), which also belong to the phenomena that may 'behave' in a different manner [...]»³. As a scholar of political phenomena, he constructs a theory on how goods and honors (offices and glory) should be allocated in the framework of the city, as well as a theory on how relationships and the problems of a premature society of market exchanges and distribution of labour should be fairly regulated. In the context of this premature market idea, he sets the framework for the stabilization of commercial relationships, in which justice regulates the different ends which are developed within the city. However, this kind of reasoning was not developed further and was eventually associated with general and vague concepts, completely relativistic, which simply formed a general philosophical approach to the idea of justice.

In the context of the analysis of Aristotle's ethics, and based on the defined issue of its theoretical vagueness, contradictory theoretical approaches have been developed according to two poles: ethics based on virtue and practical rules⁴. This conflict originates from the fundamental problem of formulating, through the philosophical processing of social relations, moral principles with a practical content for life. However, the answer to this question is associated with the mere potential of processing an overall moral system of life, which consists of sufficient functional elements in order for someone to lead a practical life. Although such an analysis includes all the modern political views, at the heart of which lies the issue of justice in social relations in distribution of labour societies, Aristotle's analysis of its ethical theory should not only be confined in matters of general functionality. It should be examined under the light of its historicity, in the context of the city-state⁵.

On the other hand, the discovery of the conceptual relevance of Aristotle's theory should not lead us to the conclusion that Aristotle wishes

cellent study, supports the opposing view that the *Great Ethics* were written by Aristotle, since «the three *Ethics* have a common plan and a common base even with regard to the theoretical content». Cf. I. DÜRING, *op. cit.*, p. 211. Hardie's introduction, in which he summarizes all the relevant arguments that have been elaborated on the authenticity, structure and content of Aristotle's three *Ethics*, is also interesting. Cf. W. F. R. HARDIE, *Aristotle's Ethical Theory*, New York, Clarendon Press, 1999, pp. 1-11. However, for the purposes of this paper, these issues are of no theoretical significance.

3. Cf. I. DÜRING, *op. cit.*, p. 237.

4. Cf. P. GOTTLIEB, *The Virtue of Aristotle's Ethics*, Cambridge, Cambridge U. P., 2009, pp. 185-186.

5. After all, as we are going to see further below on the issue of vagueness, the «functional» argument is diffused in all of Aristotle's work and constitutes a scientific principle which stems from the very conceptual development of his theory and is mainly developed in his scientific works. Cf. C. D. C. REEVE, *Practices of Reason: Aristotle's Nicomachean Ethics*, New York, Clarendon Press, 1992, p. 137.

to develop a relativistic theory of ethics. However, if the construction of the abovementioned ethical theory is not constrained, it may lead to absolute ethical relativism. It is only under this constraining sense that the Aristotelian theory constitutes an insufficient analytical and practical «tool» of moral life, and this is why the following analysis approaches Aristotle's theory of justice, with a critical eye, as a theory of the historic form of the city-state.

What is Virtue (Αρετή)?

In order to comprehend the theoretical foundations of Aristotle's theory of justice, we must first see how this theory resides in the idea of Virtue and Good and how, through the normative foundation of virtue, the idea of justice as a continuation of virtue ensues. «Aristotle defines moral worth as a *virtue*, a basic character element, which manifests itself when we try to achieve the element of the Good in a proper way»⁶. The social aspect of virtues, according to Aristotle, is justice, which manifests itself both in the institutions of the state and individual proper actions. Therefore, the Aristotelian construction of justice is mainly the expression of politics. The proper political action, which incorporates all virtues, must allocate all goods and honors according to what is Just, the Mean (μέσον). Just is defined according to values⁷. In this sense, the proper political action is teleological to justice. And justice is the matrix of moral values, in the same way as the proper political action is an ethical action and not simply another function in the social framework⁸.

Aristotle classifies virtues into two categories: the intellectual (διανοητική) virtues, which include wisdom (σοφία) and prudence (φρόνησις), and the virtues of character (ethical or moral virtues) which include practical praise-

6. I. DÜRING, *op.cit.*, p. 244.

7. Characteristic of this concept («the Mean») which permeates Aristotle's Ethical and Political works is the following passage from his *Politics*: «But what are good laws has not yet been clearly explained; the old difficulty remains. The goodness or badness, justice or injustice, of laws varies of necessity with the constitutions of states. This, however, is clear, that the laws must be adapted to the constitutions. But, if so, true forms of government will of necessity have just laws, and perverted forms of government will have unjust laws. In all sciences and arts the end is a good, and the greatest good and in the highest degree a good in the most authoritative of all – this is the political science of which the good is justice, in other words the common interest», ARISTOTLE, *Politics*, III, 1282 b 6-18. All translations of Aristotelian passages are from *The Complete Works of Aristotle. The Revised Oxford Translation*, J. BARNES (ed.), Princeton, Princeton U. P., 1995.

8. Cf. C. BARACCHI, *Aristotle's Ethics as First Philosophy*, Cambridge, Cambridge U. P., 2008, p. 143.

worthy habits (ἔξεις) – ethical life. Intellectual virtues⁹, such as wisdom and prudence, result from exercising the intellect; that is, they can be taught, whereas ethical virtues, such as generosity and temperance, are not controlled by intellectual teachings and are developed through constant habituation to daily ethical action. They are virtues by ethos (habituation) and are therefore called ethical. This, however, could not serve as a satisfactory explanation for ethical virtues, since every potential praiseworthy habit could not also be called an ethical virtue. If the «praiseworthy» does not refer to a theory of ethical life which man should lead, then it is nothing more than current dominant praises – the established ethical values one finds in every formed society. However, such an interpretation of ethical virtues would be unjust to Aristotle.

Ethical Virtue is, according to Aristotle, a habit based on free choice resulting from Reason and retained to a relative mean. But even with this interpretation of the meaning of ethical Virtue, Aristotle fails in defining in a specific way the essential criteria and boundaries of the ethical action. According to Aristotelian logic, morality may no longer be part of the current social practice, since, through individual interpretation, the reasonable character of the action and its mean, morality, detaches itself from any connection to what is traditionally and socially dominant; however, it continues not to be an objective concept established on values. It is left up to every individual and is at the same time constrained by the abovementioned characteristics. Furthermore, it is not related to a theory of righteous life¹⁰.

Under this prism we could argue that ethical virtues appear as particularly vague in Aristotle's theory. The same vagueness regarding the definition of meanings can also be found in the elaboration of the meaning of justice and its relevant practical implementations. Ethical virtue is a practical action that the prudent¹¹ person shall define according to Reason. Aris-

9. ARISTOTLE, *Nicomachean Ethics*, I, 1103 a 5.

10. Cf. the interesting analyses of C. RAPP, What Use Is Aristotle's Doctrine of the Mean? in *The Virtuous Life in Greek Ethics*, ed. B. REIS, Cambridge, Cambridge U. P., 2006, p. 99, and G. STRIKER, Aristotle's Ethics as Political Science, *ibid.*, pp. 129-132.

11. While analyzing the meaning of «prudent» in the Aristotelian theory, Sparshott makes a provocative comment. Although he seemingly comprehends correctly the lack of accuracy and the ease with which Aristotle builds a complete system of meanings and theoretical judgments based on vague assumptive values (e.g. all prudent people make decisions in the same way), however he shows that even he himself does not take into account the necessary rule of deduction which strict science accepts as valid. The connection of everything and their interpretation in the context of a system of ideas cannot be the subject of any valid social theory. Sparshott characteristically says the following: «What Aristotle says about the *prudent* is, in a sense, empty, and hence disappointing. The same disappointment awaits us in Book VI, when Aristotle promises to give substance to the schematic notion of what the prudent man (φρόνιμος) would do». Cf. F. SPARSHOTT, *op. cit.*, pp. 102 ff. The above analysis is integrated

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totle's answer to the question, «“how can we know that the judgment ‘this is good’ is correct”, is always the same even if the formulation changes: a wise person who was taught through life experiences and philosophical reflection and has achieved complete temperance is a rule and a mean; the decision he makes based on his knowledge is something good; his virtue sets the goal»¹². In this context of analysis, Aristotle does not finally enter into the core of the Socratic question, «how should we live?», but merely presents how one should search for that specific answer.

As briefly mentioned above, all virtues are based on justice. But according to the Aristotelian theory, virtues are exclusively products of Reason. The irrational part of the soul does not play a significant role in the creation or guidance of virtues. Reason provides that virtues shall apply universally and be the extreme vis-à-vis excellence, but that internally they should be balanced towards the mean. Virtue is a mean¹³ between deficiency and excess; it is a deliberate habit with a disposition of mean defined by Reason. The quality of virtue, that is, how close it is to the mean, defines the quality of Reason which in turn characterizes the virtuous man. Below, we will see that a just action is also a realization (ἐνέργεια) of the mean. Hence, we notice that there is a lot of vagueness in this Aristotelian definition as well. What is just and virtuous can finally be defined only by the wise and prudent citizen for only he knows the sciences and the human soul well and only he has experienced social life in full, which will help him separate the mean from the excessive and the deficient. However, in this way, Aristotle assumes that superior and vital functions for society are dependent on the contingency of the exist-

into a wider spectrum of issues regarding the theoretical accuracy or inaccuracy of the Aristotelian analysis. These issues, which originate from various epistemological principles and scientific subjects (philology, political theory, legal science, philosophy), all aim at the same basic question: can a theory of ethics be cognitively and epistemologically similar and reach (quantitative and qualitative) the same scientific results as a natural science? Finally, can the science of observation of natural things have epistemological equivalents to the observation of social relations? The answer to this question is partly linked to the problem of Aristotelian vagueness. However, we say partly because the degree of vagueness changes according to the theoretical structure and the evaluative significance of the respective theory. Cf. the analysis of Reeve who reviews the entire Aristotelian corpus for the problem of vagueness: specifically C. D. C. REEVE, *op. cit.*, pp. 22-34 and 94-98, and K. PSYCHOPEDIS, *The Philosopher, the Politician and the Tyrant*, Athens, Polis, 1999, p. 94.

12. I. DÜRING, *op. cit.*, p. 245.

13. Cf. ARISTOTLE, *Nicomachean Ethics*, II, 1106 a 25-1106 b 34. Rapp asserts that Aristotle's doctrine of the mean is so much connected with his overall theory of virtues that trying to reject it or neglect it as marginal we reject the whole Aristotelian theory. The general purpose of this article is to demonstrate that Aristotle's doctrine of the mean is eventually a useful concept. Cf. C. RAPP, *op. cit.*, p. 100. Cf. also the analysis of D. BOSTOCK, *Aristotle's Ethics*, Oxford, Oxford U.P., 2000, pp. 38-45 and the analysis of R. BURGER, *Aristotle's Dialogue with Socrates*, Chicago, The University of Chicago Press, 2008, pp. 56-60.

ence or non-existence of a body of virtuous citizens. Furthermore, this assumption leads us to the conclusion that for Aristotle «the city which is governed by prudence cannot be a participative democracy [...], since he assumes that even in an ideal society only few will possess the necessary ethical and intellectual virtues [...] in order to achieve prudence»¹⁴. In elaborating the meaning of prudence, we could suggest that the political and judicial theories of Aristotle are linked to a certain degree, since the right (ὀρθόν) political action also requires qualities of character beyond the average citizen. However, this opinion is not associated with some peculiar Aristotelian elitism, but with the functional and finally empirical acknowledgment of the necessity of such qualities that can be seen in the face of the philosopher and lead city life towards happiness (εὐδαιμονία).

Let us now return to the issue of vagueness. Aristotle, even before beginning to develop his ideas on this issue, has already, through the construction of the concept of virtue, determined his train of thought. This proves that the concept of mean constitutes a functional element of the Aristotelian theory, which, in this way, frees itself from the need of special and endless interpretations, while introducing Reason as the general criterion used to examine ethics. In his effort to integrate this vagueness as an inherent part of his theory and to prevent any criticism, in Book VI of the *Nicomachean Ethics*, Aristotle mentions: «There is a standard which determines the mean states which we say are intermediate between excess and defect, being in accordance with right reason. But such a statement, though true, is by no means illuminating»¹⁵. The wise man is himself the measure of virtues, which also applies to the social facet of virtues, that is, justice.

In this sense, Aristotle's reasoning on justice is already, from its very first steps, far from any modern concept of justice. However, Aristotle distinguishes between justice and its social function, which is considered to be a political function. Ultimate justice, though, and virtue, as set forth in the Aristotelian theory, cannot be used in a functional way by civil society. Reason and mean are insufficient theoretical tools to define whether an action, or a political action, is just. Aristotle's analysis in Book V of the *Nicomachean Ethics* is empirical, drawn from historical societies, and does not provide a concept of justice but rather the Aristotelian view of the function of justice in the historical form of the city-state. This vagueness is due to the association of justice with virtues, with no preceding theory on the purpose of life and the definition of the ul-

14. C. D. C. REEVE, *op. cit.*, p. 194.

15. ARISTOTLE, *Nicomachean Ethics*, VI, 1138 b 22-24.



timate good – a virtuous life¹⁶. Thus, he concludes that justice is also a means to a higher end that can be defined only by the wise citizen. In this way, he transfers the burden of interpreting justice, as well as the responsibility to discover the meaning of life, to every individual. How else would a just action be useful unless it had an end? This end is clearly subjective, therefore contestable, since it depends on the judgment of the wise citizen. This is why Aristotle mentions that it is a difficult task to be great, because it is difficult to find the mean of each thing. His example is defining the center of the circle, which cannot be performed by anybody but only by those who are proficient in geometry¹⁷.

However, the example of the circle suggests that the individual who is proficient in geometry will discover the center of the circle using tools (concepts and scientific rules), which are acceptable and cannot be doubted, and scientific methods which will reveal to him, with certainty and accuracy, the desired point. The same cannot be said about the philosopher since he lacks the necessary theoretical tools. Who can accurately and precisely confirm the existence of the mean, and therefore what is just and what the meaning of life is? This remark is not associated, of course, with a request to create a scientific theory of justice abiding by strict methods of science; the remark concerns the construction of a theory which can be associated with examples from the everyday life of the city.

The picture presented to us of the philosopher is a person who is trying to find the ultimate way of justice almost blindfolded, driven by Reason. This picture is quite blurry on what is just, because the path taken by the philosopher during his quest for the just action is undefined. Aristotle's theory answers the question «What is the purpose of life?». The answer, however, has only a vague impact on his theory of justice. Aristotle explains that the purpose of life is happiness (εὐδαιμονία)¹⁸. Therefore, the purpose of justice, as well as all other intermediate virtues and actions, is also happiness. This statement includes no mention whatsoever of the way in which the goods and honors should be allocated socially. That is, the lack of discussion of the means and the distributive principle, which should be used

16. Sparshott argues that this vagueness is based, up to a point, on the formalistic nature of the Aristotelian theory which was constructed in such a way in order to apply, by principle, to all people (F. SPARSHOTT, *op. cit.*, pp. 5 ff. and 23 ff).

17. Düring makes an excellent remark on the issue of the mean: «The principle of the proper mean is not the result of the synopsis of the popular ideal of mediocrity, of the *aurea mediocritas* and *medio tutissimus ibis*». Cf. I. DÜRING, *op. cit.*, p. 224.

18. Lännström acknowledges that «the notion of *eudaimonia* remains sketchy, and Aristotle has not shown why we should believe that the highest end is the same for all of us». A. LÄNNSTRÖM, *Loving the Fine: Virtue and Happiness in Aristotle's Ethics*, Indiana, University of Notre Dame Press, 2006, p. 82.

to perform this just action that will offer happiness to the recipients and the overall city, ultimately limits the Aristotelian theory to a philosophical exercise on the comprehension of the concept of justice in general.

Aristotle's Theory of Justice as a Historical Approach of the Idea of Law of the City-state

After developing the concept of virtue and the way it is linked to justice, Aristotle's theory enters the very notion of justice – the central question in principle of the *Nicomachean Ethics*, the meaning of justice on a theoretical and practical-empirical level. However, on this level of analysis, Aristotle approaches justice phenomenologically, observing political phenomena from their historical dimension, citing finally the history of justice, and drawing elements from the social environments of his days. Working on a historical-empirical basis, he processes the empirical knowledge he has gained from them. By bringing together the common elements, the common glories, he elaborates his own theory of justice, which reflects the social ethics of his era. «His favorite method of approach is to present the opinions that are currently dominant amongst philosophers and individuals, in general, on the issue under investigation, to discover the extent to which they are inconsistent to each other, to sort out this inconsistency and finally to highlight the remnant of truth that is common to all opinions under study»¹⁹.

However, the problem of vagueness, as presented above – the failure to present an integrated theory of justice that is specific by its goals – persists since a specific theory on the general purpose of the virtuous life is missing. Such a theory would render justice an intermediate end and mean for the ultimate and general end of man. A clear teleological consideration of society would serve, in this case, the development of a theory of justice. Indeed, Aristotle's theory on virtue follows the philosopher's general, teleological view on the nature of life, as presented in the entirety of his «scientific» texts on nature and life²⁰. However, Aristotle, being aware of the peculiarities of the subject he is going to develop, prepares us in Book I of the *Nicomachean Ethics* for the vagueness that will follow, stating charac-

19. H. RACKHAM, ARISTOTLE, *Nicomachean Ethics*, Cambridge, Mass., Harvard U. P., 1975, p. xxv. Further, Rackham explains that the described method of Aristotle does not imply a simple presentation and elaboration of the opinions of those times, but a special technique of his philosophical analysis. Cf. also, C. WARNE, *Aristotle's Nicomachean Ethics*, Manchester, Continuum, 2006, pp. 4-8.

20. H. RACKHAM, *op. cit.*, p. xxvi. Cf. also ARISTOTLE, *Nicomachean Ethics*, I, 1094 a 15-25 and G. L. RICHARDSON, *Happy Lives and the Highest Good, An Essay on Aristotle's Nicomachean Ethics*, Princeton, Princeton U. P., 2004, pp. 15-19.

teristically that, «Our discussion will be adequate if it has as much clearness as the subject-matter admits of; for precision is not to be sought for alike in all discussions, any more than in all the products of the crafts. Now fine and just actions, which political science investigates, exhibit much variety and fluctuation, so that they may be thought to exist only by convention, and not by nature»²¹.

Justice is, thus, a virtue that comprises the entirety of virtues and refers to the rational part of the soul. It is not a passion, or an emotion, but a totally reasonable action. Ethos, the ethical part of the soul according to Aristotle, is always subject to logic²². So, there is an association between Reason and virtue at the level of producing proper actions. In order to produce the proper action, the just action, Reason and virtue, the latter being considered as the expression of the former, contribute simultaneously. That's why the just action is not simply a reasonable action but a virtuous one, since it is subject to Reason, without being identical with it, keeping certain autonomy. «With the introduction of Reason and virtues as critical tools for the elaboration of laws, Aristotle claims that laws should be oriented towards the establishment of good and righteous actions in the city. If not, they are subject to criticism by philosophy and are delegalized by it»²³.

After offering a general definition of the concept of justice and associating it with virtue, Aristotle examines to whom this good is addressed and whom it concerns. Justice, in the Aristotelian theory, is a social good, a good addressed to others, maintaining the social cohesion that is necessary in the context of the perfect polis. Another necessity is friendship²⁴

21. ARISTOTLE, *Nicomachean Ethics*, I, 1094 b 13-17. Baracchi defends this argument on the ground of the peculiar nature of first knowledge – the axioms, the principles and the ultimate foundations of knowledge. Cf. C. BARACCHI, *op. cit.*, pp. 3-7.

22. ARISTOTLE, *Eudemian Ethics*, II, 1220 b 5-7.

23. K. PSYCHOPEDIS, *op. cit.*, p. 88.

24. Friendship, for Aristotle, is a particularly significant function of society. In fact, it seems that in the Aristotelian theory friendship is even more important for the proper functioning of the city than justice. In Book VIII of the *Nicomachean Ethics*, 1154 b 20-32, he specifically mentions: «Friendship seems too to hold states together, and lawgivers to care more for it than for justice; for unanimity seems to be something like friendship, and this they aim at most of all, and expel faction as their worst enemy; and when men are friends they have no need of justice, while when they are just they need friendship as well, and the truest form of justice is thought to be a friendly quality. But it is not only necessary but also noble». So, friendship in the Aristotelian reasoning is a virtuous habit, which is especially important for the proper function of the city and, consequently, for the social relations developed within the city. For an analysis of the Aristotelian types of friendship and the relation between friendship and equality, cf. C. D. C. REEVE, *op. cit.*, pp. 173-183. Also, the meaning given to friendship by Fortenbaugh is interesting. Since the purpose of friendship is to achieve the good, the pleasant and the beneficial, Fortenbaugh distinguishes between the three types of friendship on this basis, taking into account the accomplishment of the desired function. This

which, oddly enough, is superior to justice. In the Aristotelian analysis of the concept of justice, the latter is then associated with the concept of the mean, or modesty. Justice, as a means of regulating social relations, as well as the multiple ends which are developed within the city, must be an intermediate point between deficiency and excess. The inclusion of the concept of mean as an inherent element of justice stems from the democratic functioning of the city and the freedom of the individuals to define the ends and the values of their actions. Therefore, justice, as a measure of regulating these actions, must be characterized by the element of the mean and modesty, which means that it must place value on each end separately, to the extent that these ends do not impede the functioning of the city, the interests and the values of the others.

The Aristotelian reasoning is further developed empirically by separating justice into two kinds²⁵. The first kind is distributive justice. This kind of justice originates, in the context of a city (πόλις), from the allocation of goods and honors, material and social goods, that is, glory and offices. The goods are distributed to the citizens according to the equality principle. However, according to the Aristotelian way of thinking, equality is not understood as a simple equality – levelness – but as equality based on value. The state distributes the goods based upon the value of each individual²⁶. This is why distributive justice is geometric – everyone receives what he deserves according to his value – and not an arithmetic – equational – kind of justice. For the general concept of justice as well, geometric justice contains the idea of the mean since each individual must receive, according to this principle, no more and no less than he deserves.

It is obvious at this point that the definition of the concept of distributive justice carries the weight of vagueness, which haunts from the very

aspect is very interesting because it depicts the teleological dimension of the Aristotelian analysis, which is usually not taken into account by scholars in their analyses of friendship. Cf. W. W. FORTENBAUGH, *Aristotle's Practical Side: On His Psychology, Ethics, Politics and Rhetoric*, Amsterdam, Brill, 2006, especially pp. 211-222. Baracchi has a useful analysis of friendship connecting it with the concept of cosmopolitanism, as opposed to the Kantian individual experience. Cf. C. BARACCHI, *op. cit.*, pp. 264-267. Cooper underlines the significance of Aristotle's theory of friendship for the overall theory of Ethics. Cf. J. M. COOPER, *Aristotle on Friendship*, in *Essays on Aristotle's Ethics*, ed. Amélie Oksenberg RORTY, California, University of California Press, 1980, pp. 301-303. Tessitore has provided a thorough analysis of friendship: A. TESSITORE, *Reading Aristotle's Ethics: Virtue, Rhetoric, and Political Philosophy*, New York, State University of New York Press, 1996, pp. 73-95.

25. Cf. the exhaustive analysis in C. M. YOUNG, *Aristotle's Justice*, in *The Blackwell Guide to Aristotle's Nicomachean Ethics*, ed. R. KRAUT, Oxford, Blackwell Publishing, 2007, pp. 179-187.

26. Aristotle states that everyone agrees that the allocation of goods and honors must be realized on a value basis only, but they disagree on the measure of comparison of value. Cf. ARISTOTLE, *Nicomachean Ethics*, V, 1131 a 25-30.

start all the concepts pertaining to the general concept of justice. Aristotle defends this vagueness in theory as well, saying that there is no objective criterion to measure and estimate value and that this value usually gives itself to various kinds of opinions. For the democrats, says Aristotle, the measure is freedom; for the oligarchs it is wealth or origin; for the aristocrats it is virtue²⁷. Therefore, according to what is considered virtuous and befitting, the value of an individual is estimated according to his «share» of «ownership» of this good and he is conveyed the corresponding part that he deserves.

The second kind of justice is corrective justice²⁸. This kind of justice concerns both voluntary and involuntary commercial relations (transactions, exchanges) in a society. This principle of justice differs from the former, the distributive one, in that it does not concern the allocation of goods, but rather it aims at erasing any distortions arising from the financial relations which are developed in the framework of the city. However, its most important difference from distributive justice lies in the fact that it is an arithmetic and not a geometric approach to justice; that is, equality before the law affects everyone to the same extent and volume, without taking into account any other quality of the individual. Corrective justice undertakes to repair any damage caused by unjust actions and the restitution of equality, as previously defined by the state. In order to award justice, one must take into account only the action, separate from the special traits of the individual carrying it out.

The mean, a steady point of reference of the Aristotelian theory, is also served by equality before the law. The application of corrective justice is left to the judge and is awarded by him, to the measure that he can determine the mean, aided by equity. Justice in this form guards the relations that are developed in the city, which are subject to the principle of reciprocity, the Aristotelian ἀντιπεπονητός. The equation between the two labours, the principle of reciprocating the equivalent in commercial relations, is essentially inequality, if the value of the services rendered by two professions is not equal. Aristotle wonders how corrective justice shall be served then, reciprocating something equivalent to everybody. This problem is solved by the introduction of currency²⁹, which, with its par-

27. Aristotle is drawn in by the idea of aristocratic justice, which is equality based on the inequality of virtue. Aristocratic justice also complies with the idea of analogical-geometrical justice, in contrast with the core of level equality of the democratic principle.

28. Corrective justice can only be composed in relation with distributive justice. In fact, what we today name penal or civil law cannot be considered on its own; it must be seen in relation with the kind and the evolution of distributive justice, that is, the way in which the goods and honors will be allocated to the citizens.

29. ARISTOTLE, *Nicomachean Ethics*, V, 1133 a 22.

ticular attributes, shall lead the Aristotelian line of reasoning out of the dead end of comparing unequal services, in order to render the equivalent to everybody. The introduction of currency is auxiliary to the award of an exact amount of justice in the framework of developing commercial relations. The equation of the exchanges, which is attempted via corrective justice, can only be assured if there is a symmetry (a common measure of equation), which is supplied by currency.

So, according to Aristotle, there shall be a «reciprocity when the terms have been equated so that as farmer is to shoemaker, the amount of the shoemaker's work is to that of the farmer's work. But we must not bring them into a figure of proportion when they have already exchanged (otherwise one extreme will have both excesses), but when they still have their own goods. Thus they are equals and associates just because this equality can be effected in their case³⁰. [...] There must, then, be a unit, and that fixed by agreement (for which reason it is called money); for it is this that makes all things commensurate, since all things are measured by money»³¹. Aristotle seems to have conceived, in an early form, the necessity of the existence of modern economic tools, as well as of a socio-political framework that shall be completed via the functioning of justice and shall provide equality as well as predictability to the parties in the transactions. That is, Aristotle seems to predict the necessary conditions for developing an early market sociability. Perhaps Aristotle wants in this way to demonstrate that social and economic activities are controlled by politics and institutions, which are in turn controlled by the reasonable – virtuous – citizen. The connection of currency and its functions to the subtle notion of justice leads to the conclusion that, without currency, there is no justice in transactions and without justice there is no society.

A point that requires our attention in Book V of the *Nicomachean Ethics* is Aristotle's mention of reciprocal law, taken as absolutely reciprocal, corresponding to the size and the extent of the damage. Aristotle's mention of reciprocal law is of special interest, since it answers to modern questions, such as the one about the validity, or lack thereof, of the death sentence³². According to Aristotle, law cannot be considered as reciprocating in equal measure to the sanctionable actions, as this would not be in keeping either with the corrective or distributive concepts of justice. So, the right to life is transformed into an inalienable right via the moral delegitimation of the death penalty, which is inconsistent with both Reason and Virtue.

30. *Ibid.*, 1133 a 31-b 4.

31. *Ibid.*, 1133 b 20-22.

32. Perhaps Aristotle desires to criticize, via this position, the death sentence that was awarded to Socrates.

Equity (ἐπιείκεια)

One of the most important issues examined in Book V of the *Nicomachean Ethics* concerns the concept of equity³³, a key point for the Aristotelian concept of justice. The equity of law is integrated into the process of dispensing justice as a fundamental element, the removal of which results in the removal of the essence of justice. In the search for the essential and non-essential characteristics of justice, Aristotle, using the multiplicity and variation of experience as a tool for analysis, renders equity the mean that shall remove the inflexible and formalistic character of justice from the process of dispensing it. Firstly, he tries to build relations of law in the framework of the city, which shall be stable and predictable; secondly, he introduces equity as the mean that shall fulfil the concept of justice. This is done, in order to cover the functional gaps in the mechanism for awarding justice that arise due to the generality of the regulations³⁴.

The problem that Plato solved with the introduction of the wise legislator is approached by Aristotle via the judge's use of equity. Equity plays the role of expediency of law. The expediency of law, however, is law itself. The expediency of law and law itself coincide, as do all values that are no further reducible by their nature. The expediency of law, in this case, is in conflict with itself, the law and its inviolable term, its generality; only, though, in order to fulfil the aims of law, which is justice. For this reason, Aristotle puts forward that violating the generality of law is superior to law itself, since it is then and only then that law serves the deeper essence of justice. Equity, however, is supposed to be incorporated in the

33. «The reason is that all law is universal but about some things it is not possible to make a universal statement which will be correct. In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. And it is none the less correct; for the error is not in the law nor in the legislator but in the nature of the thing, since the matter of practical affairs is of this kind from the start. When the law speaks universally, then, and a case arises on it which is not covered by the universal statement, then it is right, when the legislator fails us and has erred by over-simplicity, to correct the omission – to say that the legislator himself would have said had he been present, and would have put into his law if he had known. Hence the equitable is just, and better than one kind of justice – not better than absolute justice but better than the error that arises from the absoluteness of the statement. And this is the nature of the equitable, a correction of law where it is defective owing to its universality»: ARISTOTLE, *Nicomachean Ethics*, V, 1137 b 12-27.

34. Cf. W. F. R. HARDIE, *op. cit.*, pp. 209 ff., where Hardie argues for equity from the same point of view, and the relevant discussion on the particularist interpretation of equity in C. HORN, *Epieikeia: the Competence of the Perfectly Just Person in Aristotle*, in *The Virtuous Life in Greek Ethics*, ed. B. REIS, Cambridge, Cambridge U. P., 2006, pp. 142-166, especially pp. 164-166.

excellent, transcendental (non empirical) law, which has the property of countermanding itself, retracting its generality wherever this is required, and *a priori* incorporating every possible individual case.

Equity, the violation of the generality of regulations, is an essential condition of the concept of justice, as well as a necessary condition of survival of the historic defective law. Equity also nurtures the development of friendly relations in the framework of the city, since it is by keeping to the spirit and not the letter of the law that bonds of security and friendship develop between the citizens. The law must be violated when the virtuous, reasonable individual (or judge) decides that it does not fulfil its expediency, which is justice. Equity is the counterbalance of necessity, and at the same time, of the problematic character of the generality of the regulations. Otherwise, law, in its absolute and unbending formalistic version, degenerates into a parody of law.

However, the problem with the concept of equity is that, while the laws rest on solid foundations, equity cannot take a rigid form, be instituted as a rule of law, thus making the generality of the regulations relative. Therefore, equity cannot maintain a steady and predictable relation to the rules of law. So, thanks to predictability, it is not upheld that laws should incorporate equity, the expediency of law, as their foundational element. Finally, it is worth noting that the priority accorded by Aristotle to equitable versus political law is not about the priority of the good (ἀγαθόν) versus the right (δίκαιον). This is true because, in Aristotelian thought, the equitable is itself the value of justice, completely isolated from any instrumental calculation.

Conclusions

The effort to salvage the variation and multiplicity of experience, and subsume it in a unit, drove the Aristotelian theory into analyses that, though not relativistic, are characterized by a high degree of vagueness, a quality that makes it possible for special views to be included in a unit within the city. This differentiation from the Platonic universal archetype of analysis allows Aristotle to examine particular «beliefs» and integrate them into broader frames of understanding the society. Seen under this light, the Aristotelian theory of justice, which is based on his ethical theory of virtues, presents particular problems of cohesion and reliability as a theory of law for modern societies.

The anti-dogmatic and teleological orientation of his theory of law led him to use the mean as a counterpoint to the problem of incorporating the multiple normative orientations of individuals within a theory. At this

point, Aristotle presents the prudence of the wise citizen as a measure of what is right (δέον), without systematizing sufficiently the special characteristics of the concept of Reason or prudence. The consequence is that his teleology itself remains unclear concerning the real purpose of social life.

Contrary to the above, in the matter of equity, Aristotle anticipates modern analyses of the philosophy of law. Equity is recognized as the corrective act to the formalistic qualities of law, which stem from the need to realize equality before the law in the city. In the same framework, Aristotle processes normatively the problem of friendship, from the side of accomplishing the ideal of justice. Correlating friendship and law, and imprinting a legal archetype for transactions, with a reference to a modern social model of distribution of labour, is an enlightening moment of the Aristotelian theory.

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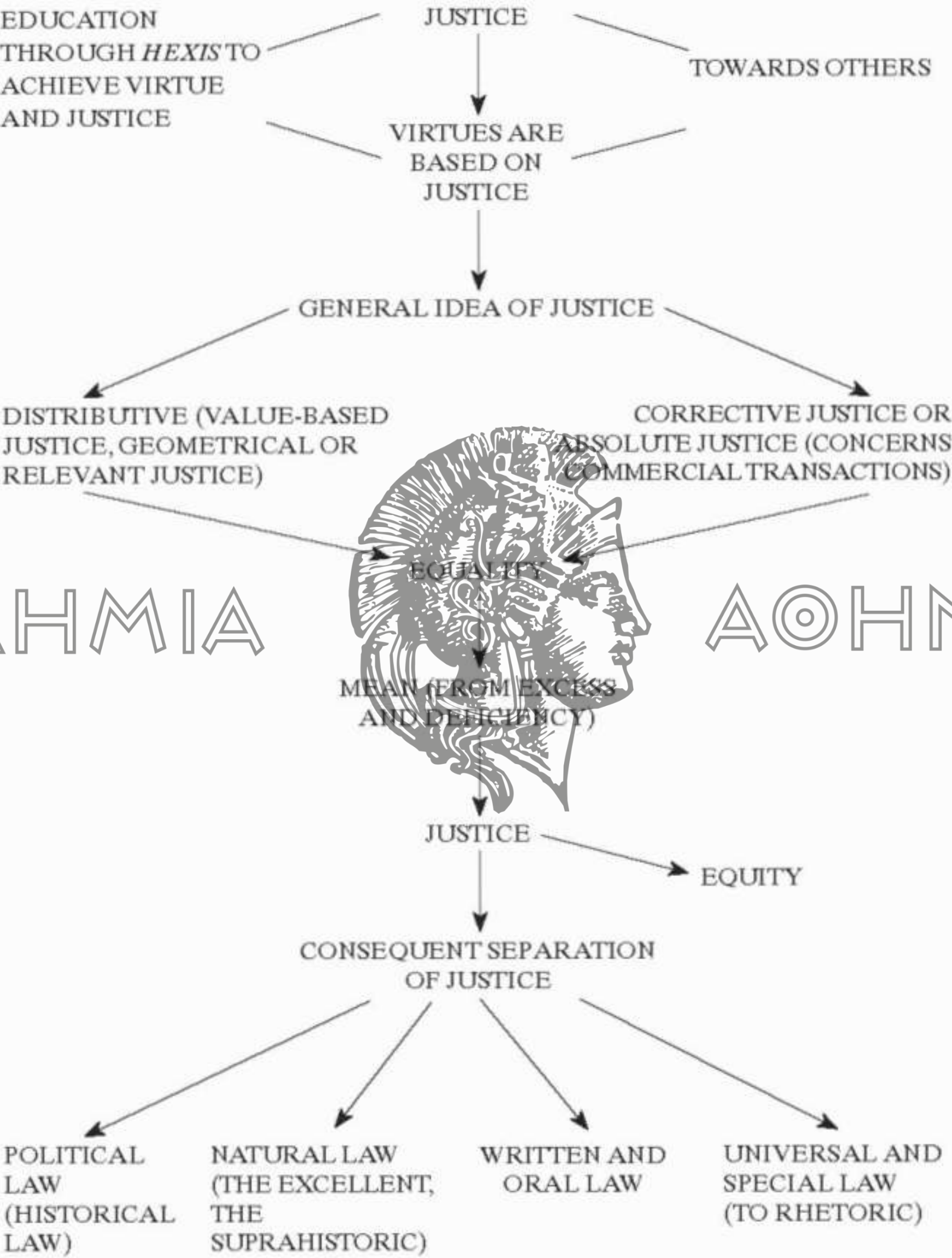
ΑΚΑΔΗΜΙΑ



ΑΘΗΝΩΝ



Graphic Presentation of the Aristotelian Theory of Justice



ΑΚΑΔΗΜΙΑ

ΑΘΗΝΩΝ



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AKAΔHMIA AΘHNΩN



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**ΖΗΤΗΜΑΤΑ ΣΧΕΤΙΚΟΤΗΤΑΣ
ΣΤΗΝ ΑΡΙΣΤΟΤΕΛΙΚΗ ΘΕΩΡΙΑ ΤΗΣ ΔΙΚΑΙΟΣΥΝΗΣ**

Παρουσίαση

Στο άρθρο αυτό επιχειρείται η κριτική ανακρίση της Αριστοτελικής θεωρίας της δικαιοσύνης, καθώς και η ανάδειξη των θεωρητικών ζητημάτων που εγείρει. Ειδικότερα, υποστηρίζεται ότι η Αριστοτελική θεωρία της δικαιοσύνης, όπως αναλύεται στα *Ηθικά Νικομάχεια*, δεν μπορεί να θεωρηθεί συνολικά ως μία χρήσιμη θεωρητικά ανάλυση των σύγχρονων φορμαλιστικών δικαιικών σχέσεων. Πιο συγκεκριμένα, υποστηρίζεται ότι η Αριστοτελική θεωρία αντιμετωπίζει προβλήματα συνοχής, αοριστίας και σχετικότητας, που προκύπτουν από την προσπάθειά της να υπερβεί την Πλατωνική θεωρία και να ενσωματώσει τις ιδιαίτερες αξίες που αναπτύσσονται εντός της πόλεως σε μία ενότητα.

Στο πλαίσιο αυτό, ο Αριστοτέλης χρησιμοποιεί την έννοια της «μεσότητας» προκειμένου να καταστήσει τη θεωρία του συνεκτική· ωστόσο, δεν συστηματοποιεί επαρκώς τις έννοιες του «Λόγου» και της «Φρονήσεως», τις οποίες χρησιμοποιεί για να διασαφηνίσει αυτήν τη μεσότητα. Παρότι ο πυρήνας της δικαιικής του θεωρίας αντιμετωπίζει ζητήματα συνοχής και αοριστίας, η θεωρία του Αριστοτέλη βρίσκεται μπροστά από την εποχή της σε ζητήματα όπως η «ἐπιείκεια» και η φιλία. Η «ἐπιείκεια» εμφανίζεται ως η πράξη που διορθώνει τις φορμαλιστικές ιδιότητες του δικαίου, της γενικής ισχύος του νόμου, ενώ η φιλία φαίνεται πως είναι ανώτερη της δικαιοσύνης και προϋπόθεση εκ των ὧν οὐκ ἄνευ για μία δίκαιη και ευημερούσα πολιτεία.

Βασίλης ΜΑΓΚΛΑΡΑΣ
(Μτφρ. Άννα ΤΑΤΣΗ)

